

By: Seliger

S.C.R. No. 32

1 SENATE CONCURRENT RESOLUTION

2 WHEREAS, Individual state governments have traditionally
3 held jurisdiction over intrastate water resources, but S. 787,
4 111th Cong. (2009), and H.R. 5088, 111th Cong. (2010), would expand
5 the Federal Water Pollution Control Act, widely known as the Clean
6 Water Act, to extend federal jurisdiction from "navigable waters of
7 the United States" to "waters of the United States," defined to
8 include "all other waters, such as intrastate lakes, rivers,
9 streams (including intermittent streams), mudflats, sandflats,
10 wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
11 natural ponds"; and

12 WHEREAS, Not only would such changes involve the federal
13 government in inefficient and cumbersome efforts to regulate highly
14 localized water resources, such as abandoned pits and ponds, but
15 this definition also grants the United States Environmental
16 Protection Agency broad and vague flexibility to interpret federal
17 jurisdiction expansively, which the agency has attempted to do
18 under the current law and with which the United States Supreme Court
19 has disagreed; in *Solid Waste Agency of Northern Cook County v.*
20 *United States Army Corps of Engineers* (2001) and *Rapanos v. United*
21 *States* (2006), the supreme court held that the Clean Water Act was
22 not intended to grant federal authority over intrastate waters and
23 that these waters were not subject to regulation under the
24 Interstate Commerce Clause of the United States Constitution; and

1 WHEREAS, The Tenth Amendment of the United States
2 Constitution preserves powers not delegated to the federal
3 government for the states, establishing federalism and state
4 sovereignty as integral founding principles of American
5 government; recent proposals by Congress to amend the Clean Water
6 Act represent a clear attempt to diminish the sovereignty of states
7 by depriving them of their jurisdiction over intrastate waters and
8 placing all water resources under the control of the federal
9 government; now, therefore, be it

10 RESOLVED, That the 82nd Legislature of the State of Texas
11 hereby express its opposition to any attempt by the federal
12 government to diminish the jurisdiction of individual states over
13 their intrastate water resources; and, be it further

14 RESOLVED, That the Texas secretary of state forward official
15 copies of this resolution to the president of the United States, to
16 the president of the Senate and the speaker of the House of
17 Representatives of the United States Congress, and to all the
18 members of the Texas delegation to Congress with the request that
19 this resolution be entered in the Congressional Record as a
20 memorial to the Congress of the United States of America.